28 February 2020

Department of Industry, Science, Energy and Resources
Electronic delivery: offshorewind@environment.gov.au

Dear Sir/Madam,

Offshore Clean Energy Infrastructure Regulatory Framework

The Clean Energy Council (CEC) is the peak body for the clean energy industry in Australia. We represent and work with over 800 of the leading businesses operating in renewable energy and energy storage. We are committed to accelerating the transformation of Australia's energy system to one that is smarter and cleaner.

With Australia's first offshore wind farm now under early-stage development, as well as growing commercial interest in servicing the need and opportunity for transmission interconnection both here in Australia and with our neighbours, we welcome the Department of Industry, Science, Energy and Resources' (DISER) discussion paper on the proposed regulatory framework for offshore clean energy infrastructure.

We are very supportive of the Australian Government's intent to provide a flexible framework designed to facilitate, rather than burden, future clean energy investment. Our feedback reflects our shared objective to create an investment-friendly framework and draws on the expertise of our membership who have collectively invested billions of dollars into onshore projects in Australia, and into offshore projects internationally, in recent years.

The key issues addressed in this submission are the proposed:

- process for Ministerial declaration
- process for seeking competitive interest
- feasibility licence term
- process for the offer of a commercial licence
- arrangements for the transfer of a commercial licence
- commercial licence term
- Transmission and Infrastructure Permit
- cost recovery arrangements
- decommissioning bond requirements.

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1. Process for Ministerial declaration

While we recognise that the Government intends to provide greater detail through the supporting policy and regulations, the proposed framework would benefit from greater clarity as to the nature of the trigger/s available in order for the Minister to consult over a given area. Specifically, it should be clarified what type of pre-application work/studies would need to be undertaken/provided in order for the Minister to agree to consult over a given area.

In order to streamline the consultation process for Government and proponents, the ideal scenario would be for the Commonwealth to proactively identify and publish zones which would not be precluded from offshore clean energy developments on the basis of defence and national security interests, existing and planned industries (shipping, fisheries, oil and gas exploration), and environmental protection areas. Alternatively, it could undertake this screening based on available information following an approach from the private sector, but prior to announcing a public consultation period.

2. Seeking competitive interest

It should be noted that the proposed process for making an area available for a feasibility licence may create a disincentive to offshore clean energy exploration. In onshore clean energy projects (eg. wind or solar farms) there is an early mover advantage, which encourages developers to seek out sites and prove them up for future development. This requires significant resources, but the process can lead directly to the securing of options to lease and the subsequent lodgement of a development application. As such, the commercial investment flows to the early mover if the development application is approved.

Under this proposed offshore framework, there is no commercial advantage to investing in exploration. Upon receiving an expression of interest in a particular area, the Minister would then conduct public consultation on the use of the zone for offshore clean energy, and subsequently conduct a competitive process to award a feasibility licence. The rational commercial behaviour would most likely see potential developers hang back, waiting for others to do the early exploration assessments, and engaging in the competitive process once it began.

3. Feasibility licence term

The proposed five-year term for a feasibility licence is extremely tight and in our judgement, would likely be unachievable for a commercial offshore wind farm. To elaborate, we have prepared a high-level indicative list of all the activities/deliverables that we expect would be required to be completed within the feasibility licence period, prior to a commercial licence being granted for an offshore wind farm:

1. All exploration activities/studies including:
    - Bathymetric surveys
    - Resource assessment
    - Flora and fauna Surveys (onshore component)
    - Surveys - marine mammals, benthic habitat and invertebrate communities, migratory birds surveys
    - Wave, coastal hazards and coastal processes
    - Seismic surveys
    - Surface and ground water (onshore component)
    - Noise and air quality assessments (including underwater noise considerations)
2. Preliminary design (sufficiently developed to provide the detail/standard required to lodge approval applications)

3. Securing of planning and environment approvals for all infrastructure, including, among others:
    - EPBC Act approvals
    - State (or local) based planning approvals for both offshore (up to 3 nautical miles) and onshore component
    - Various state-based environmental approvals related to, coastal or marine management, waterway impacts, biodiversity, flora and fauna etc
    - Relevant cultural heritage approvals
4. Preparation of environmental management plans (across multiple disciplines)
5. Ports/logistics assessments
6. Traffic management plans
7. Vessel management plan
8. Cultural heritage management plans (up to 3 nautical miles)
9. OH&S management plans (across multiple jurisdictions)
10. Preparation and implementation of project's community engagement strategy
    - Indigenous Land Use Agreements (ILUA), where relevant
11. Securing of land for onshore infrastructure and ancillary requirements
12. Negotiation and finalisation of co-use agreements with other marine users including:
    - Commercial and recreational fisheries
    - Ports
    - Traditional Owners
    - Oil and gas sector
    - Other recreational organisations
13. Detailed design and engineering
14. Tendering, procurement and contract negotiation – likely to be for several separate tranches of work (eg. turbines, transmission infrastructure, port works)
15. Connection agreement (NB. A project proponent will typically be required to know which type of turbine they expect to use in order to secure a grid connection, and the grid connection process is often requiring up to a year or longer in some locations of the network (see Figure 1 on page 4).
16. Project financing
17. Preparing for/obtaining a final investment decision*

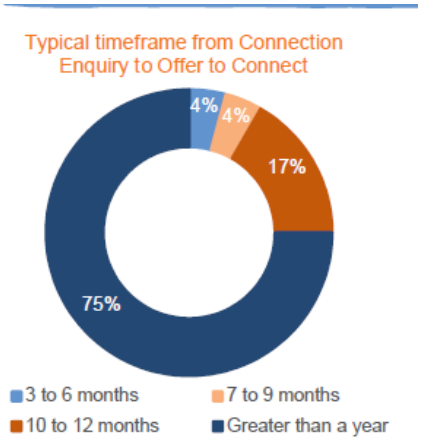
    **Note the CEC's suggestion below that this milestone could be achieved outside the Feasibility Licence period.*

It is acknowledged that a number of the activities/deliverables listed above relate to onshore components of a project that would not be regulated by the proposed feasibility or commercial licence. However, it must be recognised that for a final investment decision to be contemplated, these onshore aspects of any project will have to be addressed and appropriate approvals obtained.

This list of activities demonstrates very clearly that the five-year timeline is extremely ambitious. While this scale of timeframe may have occurred in Europe, it was with significant government support for onshore and offshore logistics. It is likely that port logistics and the availability of marine survey vessels will be a significant constraint in Australia that will constrain and impact the ability to undertake necessary exploratory and survey work in the first instance.

Many Australian onshore wind projects, which are inherently less complex, are unable to achieve this timeline from inception to final investment decision. This is particularly the case when considering the very significant challenges currently being experienced by new generators looking to connect to the national electricity grid. Grid connections are currently the biggest constraint to renewable energy developments and in many locations throughout the national electricity market (NEM) the process is taking in excess of 12 months, and even in some cases, up to two years.

Figure 1: Typical timeframe from connection enquiry to offer to connect



(Source: Grid Connections in the NEM, Aurecon, August 2019 – Commissioned by the Clean Energy Council)

While we understand based on information provided at the recent industry briefings that the Government could consider extension requests, the industry would not wish to be entirely reliant on the Minister's discretion to grant time extensions. The project's commercial risk would be reduced were a longer feasibility licence term provided (say, 7 years). The Government could ensure that these projects were being progressed within these periods by requiring proponents to demonstrate progress against key project milestones (eg. completion of exploration activities and surveys, community consultation, completion of design) within an interim timeframe.

4. Offer of a commercial licence

The process of making a final investment decision, whereby investors agree to the project proceeding, relies on all other elements of a project's feasibility being concluded, including the granting of a commercial licence. Debtors and equity investors will not give financial approval without the commercial licence having been granted. We suggest that the Commonwealth, on provision of the necessary design/engineering and management plans for the proposed development, make a commercial licence offer to the proponent, allowing up to at least 12 months for the proponent to reach a final investment decision and accept the offer.

5. Arrangements for the transfer of a commercial licence

It is not uncommon for renewable energy projects to be transferred to stand-alone commercial entities known as special purpose investment vehicles, which will typically be established as the holding company for a major energy generation asset. In such circumstances, additional thought would be required to consider how the Government's proposed 'pre-qualification' process could be applied.

6. Commercial licence term

In order to avoid prematurely shortening the operational lifespan of future offshore clean energy projects, the Government could consider allowing flexibility on the length of the licence term, should the proponent be able to demonstrate that key project infrastructure/equipment had a longer lifespan. While 30-years is now the standard operating life for a wind farm, it should be anticipated that this lifespan could increase over time as materials and technologies improve. It should also be noted that some other key pieces of technology today (eg. transformers) may already enjoy a longer life expectancy.

7. Transmission and Infrastructure Permit

We support the Government's proposal for a standalone permitting process for transmission infrastructure, such as sub-sea cables, and note the recent clarification by DISER that transmission infrastructure projects only (such as Marinus Link or Sun Cable's Australia-ASEAN Power Link) would be required to apply for a Transmission and Infrastructure Permit only, and would not be required to apply for a commercial licence.

We also note and welcome DISER's proposal that transmission infrastructure projects will have the right to traverse commercial licence holder areas, subject to negotiation/agreement with the commercial licence holder.

For international transmission projects, we note that an application may already need to be made to the Australian Communications and Media Authority for a carrier licence and a permit where the project includes a submarine fibre optic cable traversing Australia's economic exclusion zone. In the interests of avoiding duplication of permitting requirements, the Australian Government could consider a streamlined Transmission and Infrastructure Permitting approval to projects already holding an ACMA carrier licence and permit.

8. Cost recovery

The CEC considers that any cost recovery settings must be reasonable and equitable. In the interests of the Government supporting this new sector to get off the ground (as it supports other emerging industries (eg. hydrogen)) the Government could also consider waiving or heavily discounting its annual licence fees in the early years (eg. first 10 years).

We request that the Department provide clarification as to what, if any, cost recovery arrangements are proposed for a Transmission and Infrastructure Permit.

9. Decommissioning bonds

The CEC is concerned that the proposed decommissioning bond (for the full estimated value of decommissioning, to be paid before a commercial licence is issued) will pose a significant and unnecessary upfront financial burden on new projects which would increase the cost of new generation, or act as a significant disincentive to seeking a licence. In some cases, the proposed decommissioning bond may be the difference between an economic and sub-economic project.

We are also concerned about the fairness of requiring a decommissioning bond for offshore energy, whilst the oil and gas sector which carries significantly greater risks to sensitive marine environments, are not currently required to provide a bond for the full estimated value of decommissioning. This inequity would need to be addressed by the Government.

Whilst the principle of government seeking to obtain financial surety in relation to the decommissioning of offshore infrastructure is understood, it is recommended that greater flexibility is allowed for proponents to provide appropriate financial assurance to the Government. We suggest a preferable approach would be a 'ratcheting bond' (or similar), which features a low bond amount in the early years of operation but which escalates during the asset's operation such that the full cost of decommissioning would be available as the end of the asset's life is reached. This approach would allow the bond to be funded by cash-flow from the asset rather than being an upfront lump-sum equity contribution.

Another alternative would be for project owners to make a payment into a central fund (such as the approach applied in the Western Australian Mining Rehabilitation Fund.) It should be recognised that the preferred method of financial assurance could differ between proponents. Providing a

variety of financial assurance methods would be in keeping with the Department's promotion of a flexible policy approach.

We note that in onshore wind projects, decommissioning would not typically involve the removal of underground electrical cables. It should be considered that in a marine environment, the removal of inert, sub-sea cables could present a higher environmental risk than leaving them in-situ.

In closing, we would like to commend the Government for moving quickly to put a framework in place this year. We look forward to working collaboratively with you to iron out the finer details of the framework over the coming weeks and months to ensure that it will support new investment and enable Australia to make the most of its tremendous offshore clean energy opportunities.

Please don't hesitate to contact me on 0417 033 752 or at afreeman@cleanenergycouncil.org.au should you wish to discuss any aspects of our submission further. Finally, please note that we are happy for the Department to make the CEC's submission publicly available, as it is our usual practice to publish our submissions on our web site.

Yours sincerely,

Anna Freeman
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